



WESTFIELD-WASHINGTON
BOARD OF ZONING APPEALS

June 13, 2023
2306-VS-13 & 2306-VU-05
Exhibit 1

Petition Number: 2306-VS-13 & 2306-VU-05

Subject Site Address: 17728 Sun Park Drive (the "Property")

Petitioner: Direct Repair Collision LLC (the "Petitioner")

Request: Direct Repair Collision LLC requests a Variance of Use to permit an Automotive Refurbishing Business and for the US Highway 31 Overlay District development standards exemption to be inapplicable to the 4.32 acres +/- Property in the Enclosed Industrial (EI) zoning district. Article 13.2 and Article 5.2(L)

Current Zoning: EI: Enclosed Industrial

Current Land Use: Warehousing, Office

Approximate Acreage: 4.32 acres+/-

Exhibits:

1. Staff Report
2. Location Map
3. Statement of Intent
4. Petitioners Response to Staff Questions
5. Application

Staff Reviewer: Weston Rogers, Associate Planner

OVERVIEW

Location: The subject property is 4.32 acres +/- in size and is located at 17728 Sun Park Drive (the "Property") (see **Exhibit 2**). The Property is zoned EI: Enclosed Industrial and is located within the U.S. Highway 31 Overlay District.

Requested Variances: The Petitioner request a Variance of Use to permit an Automotive Refurbishing Business on the Property as further described in the Statement of Intent (see **Exhibit 3**) and for the US Highway 31 Overlay District development standards exemption to be inapplicable to the Property.

BACKGROUND

The Property, located at 17728 Sun Park Drive includes an existing roughly 40,000 SF enclosed building. The original portion of this existing building (+/- 30,000 SF) was developed in 1989 under permit numbers 89-IP-148 and 89-AP-15. The building was later expanded by an additional 10,000 SF in 1998 under permit numbers 98-IP-182. The current zoning of the property, Enclosed Industrial (EI) has remained unchanged since the early 1970's.

SUMMARY OF VARIANCE

Variance of Use – [Article 13.2](#)

The Petitioner is requesting to permit an “Automotive Refurbishing Business”, as described in the Statement of Intent (see **Exhibit 3**), on the Property.

The Community Development Department has determined this land use to closely align with the UDO definition of “High Intensity Retail”. This land use, High Intensity Retail, is not permitted within the US Highway 31 Overlay District.

Moreover, the Petitioner is requesting a Variance of Use to permit an Automotive Refurbishing Business, as described in the Statement of Intent (see **Exhibit 3**) on the Property.

It should be noted that if 2306-VU-05 is not approved, then variance request 2306-VU-05 is not necessary.

Variance of Development Standard – [Article 5.2\(L\)](#)

The Petitioner is requesting to exempt Article 5.2(L) from being applicable to the subject property.

The U.S. Highway 31 Overlay District Ordinance (the “Overlay”) states that if a facility changes to a use different from when the Overlay standards were adopted, then the site is subject to all of the Overlay standards.

Applying the Overlay standards to the Property would require the existing building to be brought into compliance with all the Overlay’s standards, including: meeting the use requirements, lot size, setbacks, building height, minimum gross floor area, lot coverage, architectural requirements, and screening requirements.

As such, the petitioner is requesting a Variance of Standard for relief from the Overlay’s development standards.

COMPREHENSIVE PLAN

The Westfield-Washington Township Comprehensive Plan identifies a large majority of the Property within the “Business Park” land use classification. A link to the Comprehensive Plan “Business Park” section can be found [here](#).

The Comprehensive Plan identifies appropriate land uses in this land use classification to include: i) manufacturing; ii) subordinate office, retail, and services; iii) Research and Development; and iv) warehousing.



In addition, the Property is also located within the Family Sports Capital of America Comprehensive Plan Amendment – link [here](#).

The property to the southeast across Sun Park Drive is located within the “Gateway Subdistrict” of the Grand Junction Addendum to the Comprehensive Plan – link [here](#).

PROCEDURAL

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variance of Use and Variance of Development Standard. This petition is scheduled to receive its public hearing at the June 13, 2022, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law and the Board of Zoning Appeals’ Rules of Procedure.

Conditions: The UDO¹ and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

Acknowledgement of Variance: If the Board of Zoning Appeals approves this petition, then the UDO² requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

Variances of Development Standard: The Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the underlying zoning ordinance. A variance may be approved under Indiana Code § 36-7-4-918.5 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;

¹ Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

² Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.

Variances of Use: The Board of Zoning Appeals shall approve or deny variances from the terms of the UDO. A variance may be approved under Indiana Code § 36-7-4-918.4 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
3. The need for the variance arises from some condition peculiar to the property involved;
4. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property; and
5. The approval does not interfere substantially with the Comprehensive Plan.

DEPARTMENT COMMENTS:

Recommended Conditions for Approval:

If the Board is inclined to approve 2306-VS-13 & 2306-VU-05, the Department recommends the following conditions:

1. That the Variance of Use shall be tied to the Applicant, Direct Repair Collision LLC;
2. That if the Petitioner ceases operation on the Property, the variances associated with this approval shall be annulled;
3. That the use of the Property shall remain consistent with the Statement of Intent as described in **Exhibit 3**;
4. That the use of the Property will occur entirely within the existing building on site; and
5. That the Petitioner records an Acknowledgement of Variance with the Hamilton County Recorder's Office and returns a copy of the recorded instrument to the Community Development Department.

Recommended Findings for Approval (2306-VU-05):

If the Board is inclined to approve the Variance of Use, then the Department recommends the following findings:

The approval will not be injurious to the public health, safety, morals, and general welfare of the community:

- **Finding:** It is unlikely that allowing an Automotive Refurbishing Business to locate on the Property will be injurious to the public health, safety, morals, and general welfare of the community as the use will be contained to the Property.

The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

- **Finding:** It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner. The Property and most of the surrounding area were developed without the existing U.S. Highway 31 Overlay standards being in effect. Very little of the surrounding area complies with the Overlay standards. Approving the variance would result in the character of the area to remain unchanged.

The need for the variance of use arises from some condition peculiar to the property involved.

- **Finding:** An Automotive Refurbishing Business is considered to be a High Intensity Retail use which is not permitted within the Enclosed Industrial (EI) zoning district and excluded within the U.S. Highway 31 Overlay District.

The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property:

- **Finding:** The strict application of the terms of the zoning ordinance will result in the inability for the Petitioner to utilize the Property for the intended business purpose.

The approval does not interfere substantially with the comprehensive plan:

- **Finding:** The Westfield-Washington Comprehensive Plan (the “Comprehensive Plan”) identifies the Property within the “Business Park” land use classification. The proposed Automotive Refurbishing Business use concurs with elements of this plan. The Property also falls within the Family Sports Capital Comprehensive Plan Amendment. However, in addition to the sports-related uses, this plan contemplates that additional related and supporting land uses to be located within, adjacent to and nearby the Sports Campus.

Recommended Findings for Approval (2306-VS-13):

If the Board is inclined to approve the Variance of Development Standard, then the Department recommends the following findings:

The approval will not be injurious to the public health, safety, morals, and general welfare of the community:

- **Finding:** It is unlikely that allowing an Automotive Refurbishing Business to locate on the Property will be injurious to the public health, safety, morals, and general welfare of the community as the use will be contained to the Property.

The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

- **Finding:** It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner. The Property and most of the surrounding area were developed without the existing U.S. Highway 31 Overlay standards being in effect. Very little of the surrounding area complies with the Overlay standards. Approving the variance would result in the character of the area to remain unchanged.

The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property:

- **Finding:** The strict application of the terms of the zoning ordinance will result in the inability for the Petitioner to utilize the Property for the intended business purpose.

Denial: If the Board is inclined to deny the requested variance, then the Department recommends denying the variance, and then tabling the adoption of findings until the Board's next meeting with direction to the Department to prepare the findings pursuant to the public hearing evidence and Board discussion.